IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O. O. C. J.
WRIT PETITION NO. 1704 OF 2004

Mahanagar Co-operative Bank Ltd. .. Petitioner.

Vs.

The Divisional Joint Registrar C.S.,

Mumbai Division, & Ors. .. Respondents

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Shri B.G.Vaidya for the petitioners.

Shri N.S.Patel, AGP for respondent No.1.

Shri Subhash Dhadge for respondent No.6.

Ms Suchitra Maharana i/b Consulta Juris for respondent No.7.

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Coram : R.M.S.Khandeparkar, J

Dated : 11th August, 2004.

P.C.

1. Heard the learned advocate for the parties. The Divisional Joint Registrar of the Co-operative Societies in the impugned order, on assessment of the entire material on record, has arrived at the following finding.

"However, Mr.Gopal Purdhottam Parmar one of the joint

owner had played a mischief and without disclosing the factual position to the applicants company sold the said flat no.303 jointly held by him to the applicants company. The applicant company is a bona fide purchaser of the flat no.303 for valuable consideration without notice of defects in the title of the Respondent No.3. The entire transaction of sale to the applicants Company is completed prior to the obtaining judgment and order of the Hon'ble Co-operative Court by the Respondent Bank. It also appears that he has transferred the property before the issuance of Recovery Certificate u/s.98 of the M.C.S.act and therefore the transfer of Flat No.303 is legal, valid and sustaining in law. The Housing Society also before issuing the Duplicate Share Certificate No.72 in respect of the said flat published a press note for the notice of public but the Respondent Bank didn't come forward with its objection for issuing Duplicate Share Certificate nor produced the original share certificate No.72. The entire transaction was completed with the full knowledge and consent of the Liberty CHS Ltd. By the applicants company under a Sale Agreement dated 04/03/1999 which is duly registered with the Sub-Registrar, Thane. The Respondent Bank also failed to produce mortgage of the said Flat while

granting a loan of Rs.3,00,000/- to the proprietary firm of Mr.Gopal Purshottam Parmar and therefore, I am of the determined view that the attachment levied by the Special Recovery officer i.e. Respondent No.2 by his order dated 03/10/2002 is improper, illegal and not conforming to law and therefore constrained to interfere with the impugned order."

2. The material on record also discloses that by letter dated 18th December, 2000, the petitioner bank was called upon to furnish relevant documents under which the right has been created in favour of the bank in relation to the suit flat. There is nothing on record to disclose that the bank has accordingly complied with the said request at any point of time. Simultaneously, the findings arrived at by the lower authority disclose that even before the lower authority, the petitioner bank did not produce the relevant documents. That apart, the entire transaction between the said Gopal Parmar and the respondent company under the Sale of Agreement dated 4th March, 1999 was carried out with full knowledge to the petitioner and with the consent of the society. In the circumstances, there being disputed questions of facts and the findings on facts arrived at by the lower authority reveal total negligence on the part of the petitioner bank in taking appropriate steps at an appropriate time, there is no case for interference in writ

jurisdiction. The petitioner, however, is at liberty to pursue regular civil remedy, if so desires.

3. With these observations, the petition is disposed of with no order as to costs.

4. Certified copy be expedited.

(R.M.S.Khandeparkar, J)

A co-operative Bank duly registered)
under The Maharashtra Co-operative)
Societies Act, 1960, and having its)
registered office at “Hiramani” Super)
Market Building, Dr.Babasaheb)
Ambedkar Road, Lalbaug,)
Mumbai – 400 012.).. Petitioner.

Vs.

1. The Divisional Joint Registrar C.S.)
Mumbai Division, Malhotra House,)
Opp. GPO, Mumbai.)

2. Special Recovery Officer,)
attached to Mahanagar Co-op. Bank)
Ltd., “Hiramani” Super Market)
Building, Dr. Babasaheb Ambedkar)
Road, Lalbaug, Mumbai.)

3. M/s.Suresh Footwear,)
through its proprietor Shri Gopal)
Purshottam Parmar SS-1/154,)
Sector 2, Vashi, New Mumbai.)

4. Shri Harajiram Dhanaji Tigaya,)
A-2/444, Sector 24, Turbhe,)
Navi Mumbai.)

5. Shri Rohidas Sambhaji Sonawane,)
D-29/3, TTC, MIDC, Sanpada,)
Navi Mumbai.)

6. M/s.Dropadi Finance Ltd.,)
At 7, Madhu Kunj, 553 Adenwalla)
Road, Matunga, Mumbai 400 019.)

7. The Liberty Co-op.Housing)
Society Ltd., Plot No.17, Vashi,)
Navi Mumbai – 400 705.).. Respondents

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